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### NOTES.

**BENEFICIAL SOCIETIES—CHANGE OF BENEFICIARY—EQUITIES**  
—The Supreme Court of Errors of Connecticut has ruled<sup>1</sup> that the administrator of the wife of a member of a fraternal beneficial order was not entitled to collect the benefit where the wife predeceased the member, and no new designation of beneficiary was made.

The charter and by-laws of the association provided that in all controversies arising with regard to benefits and rights of members the laws of Massachusetts (the domicile of the society) should control; by that law no beneficiary could take a vested interest in the benefit until the same was due and payable upon the death of the member.

The provision of the Massachusetts statute is only declaratory of what was already the established rule with regard to the interest of a designated beneficiary in certificate issued to a member of

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<sup>1</sup> Supreme Colony of United Order of Pilgrim Fathers v. Towne, 89 Atl. Rep. 264 (Conn. 1914).

the society. It is sharply contrasted with rule in cases of life insurance, where policies payable to a person other than the insured ordinarily create a vested right in the former to the policy and its proceeds, in consequence the assured cannot in any way control or dispose of the policy except with the consent of the beneficiary.<sup>2</sup> In life insurance cases it is sometimes referred to as "an irrevocable trust," or as "a valid settlement not to be disturbed except by consent of the beneficiary."

In order to create any vested legal interest in the benefit prior to the death of the member it must be expressly provided in the charter or by-laws of the association. Generally speaking the member may change his designation at will, provided he conforms to the regulations of the association.<sup>3</sup> The voluntary payment of the member's assessments upon the certificate by the original beneficiary therein named, in the absence of any agreement with the member to do so will neither deprive the member of the right to change his beneficiary, nor entitle the original beneficiary to the insurance fund as against a subsequent beneficiary named in accordance with the rules of the association.<sup>4</sup> But where there is found to be an agreement between the original beneficiary and the member that such payments shall be made, the authorities are divided.<sup>5</sup> The same difficulty is not shown in reaching the decision that the beneficiary has acquired rights, which will be protected, at least in equity, as against a later designated beneficiary in the cases where, in making the payments upon members' assessments, the original beneficiary has relied upon an express assurance that there will be no change.<sup>6</sup> In *Jory v. Supreme Council*,<sup>7</sup> the court said, "We know of nothing in the law which deprives a person contemplating membership in a mutual benefit association from so contracting with the proposed

<sup>2</sup> *Pingrey v. Nat'l L. Ins. Co.*, 144 Mass. 38; 11 N. E. Rep. 502 (1887); *Ricker v. Charter Oak L. I. Co.*, 27 Minn. 193 (1880); *Weston v. Richardson*, 47 L. T. (N. S.) 514 (1882); *Ferndon v. Canfield*, 104 N. Y. 143, 10 N. E. Rep. 146 (1887); *Commonwealth v. Equ. Ben. Ass'n*, 137 Pa. 412 (1890).

<sup>3</sup> *Masonic M. B. A. v. Tolles*, 70 Conn. 537, 40 Atl. Rep. 448 (1889); *Leaf v. Leaf*, 92 Ky. 166, 17 S. W. Rep. 354, 854 (1891); *Grand Lodge v. McGrath*, 133 Mich. 626, 96 N. W. Rep. 739 (1903); *semble*, *Heasley v. Heasley*, 191 Pa. 539 (1899).

<sup>4</sup> *Jory v. Supr. Council A. L. H.*, 105 Cal. 20, 38 Pac. Rep. 524 (1894); *Masonic M. B. A. v. Tolles*, *Leaf v. Leaf*, *Grand Lodge v. McGrath*, *Heasley v. Heasley*, *supra*, n. 3.

<sup>5</sup> That the member has such right to change designation, *Brett v. Warnick*, 44 Ore. 511, 75 Pac. Rep. 1061 (1904); *Bernard v. Gr. Lodge A. O. U. W.*, 13 S. Dak. 132, 82 N. W. Rep. 404 (1900). *Contra*, *Mas. Ben. Ass'n v. Bunch*, 109 Mo. 560, 19 S. W. Rep. 25 (1892); *Fisher v. Fisher*, 99 Tenn. 629, 42 S. W. Rep. 448 (1897).

<sup>6</sup> *King v. Supr. Council C. M. B. A.*, 216 Pa. 553, 65 Atl. Rep. 1108 (1907); *Grimbley v. Harrold*, 125 Cal. 24, 57 Pac. Rep. 558 (1899); *semble*, *Spengler v. Spengler*, 65 N. J. Eq. 176, 55 Atl. 285 (1903).

<sup>7</sup> 105 Cal. 20, 38 Pac. Rep. 524 (1894).

beneficiary as that, when such certificate is issued equities in favor of the beneficiary are born, of such merit that the insured member has no power to defeat them. . . . As between the original and subsequent beneficiaries the whole matter seems to be rather a question of equities (as opposed to vested interest in the first) and the stronger and better equity must prevail."

That is, wherever sound equities are existing in the first beneficiary, the member should be declared estopped to change his designation; and such estoppel being in force against the insured, it is equally in force and stands against the second volunteer beneficiary.

Some courts have designated, as vested, the right of the original beneficiary to take the benefit, where he had made the payments under an agreement, sufficiently specific, between himself and the member, even though the member had subsequently changed his designation.<sup>8</sup> But it will be found that the use of the term "vested" results rather from haste or convenience than from full consideration of the question. "Vested interest" and "superior equities" are in many aspects analogous, and may be readily confused; but the clearer view is that announced in the California decisions.<sup>9</sup>

J. C. A.

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CONFLICT OF LAWS—LIMITATION OF LIABILITY ON THE HIGH SEAS—The Titanic disaster, bringing in its wake claims amounting to millions of dollars, at once raises the question as to whether the federal statute limiting the shipowner's liability is applicable. The District Court for the Southern District of New York has decided that it does not apply,<sup>1</sup> the case is now pending before the United States Supreme Court, whose decision will be a leading one.

The statute<sup>2</sup> limits the liability of the owner of a vessel to his interest in the vessel and the freight pending, and in its terms is sweeping, referring to "the owner of any vessel," and not merely to American vessels. The question of its application to foreign vessels has been the subject of numerous decisions and in the case of collision between two ships is fairly well settled. The case of *The Scotland*<sup>3</sup> was the first case on this point. Here the British steamer *Scotland* came into collision with the American ship *Kate Dyer*, and

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<sup>8</sup> *Stronge v. Supr. Lodge K. of P.*, 189 N. Y. 346, 82 N. E. Rep. 433 (1907); *Supr. Council v. Tracy*, 169 Ill. 123, 48 N. E. Rep. 401 (1897); *Leaf v. Leaf*, 92 Ky. 166, 17 S. W. Rep. 354 (1891); *semble*, *Supr. Coun. C. M. B. A. v. Murphy*, 65 N. J. Eq. 60, 55 Atl. 497 (1903).

<sup>9</sup> In accord with the view of the California courts expressed in *Jory v. Supr. Council*, see the rulings in the cases, *supra*, n. 6.

<sup>1</sup> *The Titanic*, 209 Fed. Rep. 501 (1914).

<sup>2</sup> U. S. Comp. St. 1901, pp. 2943-2945, §§4282-4289.

<sup>3</sup> 105 U. S. 24 (1881).